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REGULATORY AUTHORITY
'98 JUL 13 PM 2:52
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1905-1992

July 13, 1998

VIA HAND DELIVERY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

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JUL 13 1997

TN REGULATORY AUTHORITY

JR
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Re: *Petition for an Investigation and/or Show Cause Order
to Determine Just and Reasonable Rates Charged by BellSouth
Telecommunications, Inc.*

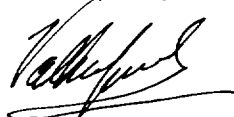
Docket No: 98-00021

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Petition of AT&T Communications of the South Central States, Inc. for Leave to Intervene in the above-referenced case. I have also enclosed our check in the amount of \$25.00 for the filing fee.

Copies are being served on all known interested parties.

Yours very truly,


Val Sanford

VS/ghc
Enclosure

cc: James P. Lamoureux, Esq.
Garry Sharp

VOUCHER NO. 777100895
CD 033828 SRC. 281.03
AMT. REC. 25.00
DEPOSIT 7-14-98

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July 20, 1998

VIA HAND DELIVERY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

Re: *Petition for an Investigation and/or Show Cause Order
to Determine Just and Reasonable Rates Charged by BellSouth
Telecommunications, Inc.*

Docket No: 98-00021

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Reply of AT&T Communications of the South Central States, Inc. to "BellSouth Telecommunications, Inc.'s Response to 'Amended and Supplemental Petition' of American Association of Retired Persons and AT&T's Petition for Leave to Intervene" in the above-referenced case.

Copies are being served on all known interested parties.

Yours very truly,


Val Sanford

VS/ghc
Enclosure

cc: James P. Lamoureux, Esq.
Garry Sharp

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

RECEIVED
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'98 JUL 20 PM 4 05

IN RE: **Petition For An Investigation And/Or Show Cause Order
To Determine Just and Reasonable Rates Charged By BellSouth
Telecommunications, Inc.**

THE
SECRETARY

Docket No. 98-00021

**REPLY OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL
STATES, INC. TO "BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO 'AMENDED AND SUPPLEMENTAL PETITION' OF
AMERICAN ASSOCIATION OF RETIRED PERSONS AND AT&T'S
PETITION FOR LEAVE TO INTERVENE"**

BellSouth Telecommunications, Inc. ("BST") has filed a response to the Amended Supplemental Petition of the American Association of Retired Persons ("AARP") and to AT&T Communications of the South Central States, Inc.'s Petition for Leave to Intervene ("AT&T") in which it takes the position that there has been a legislative and a judicial determination that its rates for the period between January 1, 1996 and the effective date of its price regulation plan are affordable and just and reasonable. That position is manifestly without merit. BellSouth ignores:

- (i) the difference between the past, the present and the future, i.e., the difference between: (a) determining the validity of the TPSC's orders, including the basis for reversing the TPSC, i.e., what the TPSC should have done, which is what the Court of Appeals decided in its October 1, 1997 Opinion; (b) determining the consequences of that error in the present interim before a price regulation plan

is made effective, which the Court of Appeals dealt with in its November 1995 Order on BST's Petition for Clarification or Rehearing; and (c) what the TRA must, or should, do on the remand in approving, implementing and making effective BST's price regulation plan for the future.

- (ii) the fact that the Court of Appeals expressly held that BellSouth has not been and is not operating under a price regulation plan, but has been and will be until the effective date of a price regulation plan subject to the general regulatory jurisdiction of the TRA; and
- (iii) the plain language of T.C.A. §65-5-209(a) with respect to the "effective date" of price regulation, of T.C.A. §65-5-209(b) with respect to an ILEC's power to charge rates "upon approval of its application," and of T.C.A. §65-5-209(c) with respect to rates "with the implementation of a price regulation plan."

I. NO VALID ORDER HAS BEEN ENTERED GENERALLY FIXING BST'S RATES SINCE THE EXPIRATION ON DECEMBER 31, 1995 OF THE LAST PERIOD FOR WHICH BST'S RATES WERE SET.

The TPSC's order of January 23, 1995 which purported to fix BST's initial rates for the purposes of a price regulation plan was vacated by the Court of Appeals. Further, the Court of Appeals vacated "all related earlier orders with regard to BellSouth's application for a price regulation plan."

In vacating those orders, the Court of Appeals stated as a basis for its decision that the TPSC "should have approved BellSouth's application for a price regulation plan based on BellSouth's rates existing on June 6, 1995, as required by Tenn. Code Ann. §65-5-209(c)." (Emphasis added).

What the TPSC "should have" done does not translate directly into what the TRA now must do, much less constitute an adjudication as to the consequences of the failure of the TPSC to do what it "should have" done.

No where in its October 1, 1997 Opinion did the Court of Appeals purport to adjudicate the consequences of the TPSC's failure. Indeed, BST, recognizing that absence filed its Petition for Clarification and Rehearing, wherein it attempted to obtain such an adjudication. In its Opinion on BST's Petition, which Opinion is included in the "Mandate" to the TRA, the Court of Appeals expressly ruled with respect to BST's regulatory status.

II. THE COURT OF APPEALS EXPRESSLY HELD THAT BELL SOUTH HAS NOT BEEN OPERATING UNDER A PRICE REGULATION PLAN, BUT RATHER HAS BEEN SUBJECT TO THE GENERAL REGULATORY JURISDICTION OF THE TRA.

The Court of Appeals held:

Throughout these proceedings, BellSouth consistently asserted that the procedure followed by the Commission was not authorized by Tenn. Code Ann. §65-5-209 and requested the courts to require the regulators to make their decisions in accordance with Tenn. Code Ann. §65-5-209. Our October 1, 1997 opinion settles the dispute concerning what Tenn. Code Ann. §65-5-209 requires. Now it falls upon the Tennessee Regulatory Authority to consider BellSouth's application for a price regulation plan in accordance with Tenn. Code Ann. §65-5-209.

Ordering the Authority to grant BellSouth's application for a price regulation plan and to declare that this plan has been in effect since March 1, 1996 would invade the Authority's jurisdiction and would also be inconsistent with our April 3, 1996 stay order. As a result of our stay, BellSouth has continued to operate under the former regulatory statutes rather than the new statutes enacted in

1995. Accordingly, BellSouth has not, as a matter of fact and law, been operating under a price regulation plan since March 1, 1996. It would be error for us to hold at this juncture that it has.

III. **UNDER T.C.A. §65-5-209, BST WILL NOT BE OPERATING UNDER A PRICE REGULATION PLAN UNTIL THE TRA ENTERS AN ORDER APPROVING AND IMPLEMENTING BST'S APPLICATION AND FIXING THE EFFECTIVE DATE OF PRICE REGULATION FOR BST.**

T.C.A. §65-5-209(a) provides:

Rates for telecommunications services are just and reasonable when they are determined to be affordable as set forth in this section. Using the procedures established in this section, the authority shall ensure that rates for all basic local exchange telephone services and non-basic services are affordable on the effective date of price regulation for each incumbent local exchange telephone company. (Emphasis added).

T. C. A. §65-5-209(b) provides:

An incumbent local exchange telephone company shall, upon approval of its application under subsection (c), be empowered to, and shall charge and collect only such rates that are less than or equal to the maximum permitted by this section and subject to the safeguards in §65-5-208(c) and (d) and the non-discrimination provisions of this title. (Emphasis added).

T. C. A. §65-5-209(c) provides in pertinent part:

The authority shall enter an order within ninety (90) days of the application of an incumbent local exchange telephone company implementing a price regulation plan for such company. With the implementation of a price regulation plan, the rates existing on Jun 6, 1995, for all basic local exchange telephone services and non-basic services, as defined in §65-5-208, are deemed affordable if the incumbent local exchange telephone company's

earned rate of return on its most recent Tennessee Regulatory Authority 3.01 report as audited by the authority staff pursuant to subsection (j) is equal to or less than the company's current authorized fair rate of return existing at the time of the company's application. (Emphasis added).


Until that order approving and implementing BST's application is entered, and becomes final, and the effective date is fixed, BST continues to be subject to the general regulatory jurisdiction of the TRA. Certainly, there is nothing in the statute which would authorize the TRA to approve and implement a price regulation plan or fix an effective date retroactively.

Even assuming that the TRA decides that BST's earned rate of return is equal to or less than the Company's current authorized fair rate of return, that results, not in an adjudication (which the Legislature would have no power to make) that the rates existing on June 6, 1995 were affordable and just and reasonable for the period between January 1, 1996 and the effective date of the implementation of a price regulation plan; rather those rates are prospectively determined to be "the initial rates on which a price regulation plan is based." The statute does not say that the June 6, 1995 rates will be the initial rates which shall be charged; rather it expressly says those rates will be the initial rates on which the price regulation plan is "based."

The TRA is left to decide, first, in this proceeding, the justness and reasonableness of BST's rates from January 1, 1996 until the effective date of price regulation; and second, in the BellSouth price regulation plan proceeding, among other things, assuming that the earned rate of return is equal to or less than the current authorized fair rate of return, the rates actually to be charged based on the June 6, 1995 rates.

CONCLUSION

Nothing in the Opinion of the Court of Appeals, or in the language of T.C.A. §65-5-209 supports BellSouth's position. Certainly, nothing in either the opinions or the statute justifies denying consideration of AARP's Amended and Supplemental Petition or AT&T's Petition for Leave to Intervene.

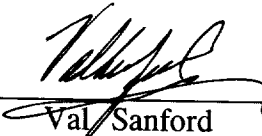


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Attorneys for Petitioner AT&T Communications
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CERTIFICATE OF SERVICE

I, Val Sanford, hereby certify that a copy of the foregoing Reply of AT&T of the South Central States, Inc. has been served on the following parties of record at the addresses shown by depositing a copy of the same in the U. S. First Class Mail, postage paid, this 20th day of July, 1998.


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